IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 25, 2007

STATE OF TENNESSEE v. THOMAS LOUIS MOORE

Direct Appeal from the Criminal Court for Bradley County
No. 04-843 Carroll L. Ross, Judge

No. E2006-01260-CCA-R3-CD - Filed June 1, 2007

The appellant, Thomas Louis Moore, was convicted by a jury in the Bradley County Criminal Court on one count of arson and one count of criminal trespass. He received a total effective sentence of seven years in the Tennessee Department of Correction. On appeal, the appellant argues that the evidence was insufficient to establish that he committed arson because the State failed to prove that he acted knowingly. Upon our review of the record and the parties' briefs, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JERRY L. SMITH and D. KELLY THOMAS, JR., JJ., joined.

Richard Hughes, District Public Defender, Cleveland, Tennessee, for the appellant, Thomas Louis Moore.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Jerry N. Estes, District Attorney General; and John Williams and Stephen Crump, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

On December 15, 2004, a Bradley County Grand Jury returned an indictment charging the appellant with arson and criminal trespass. At trial, the State's first witness, Jeremy Brewer, testified that it had been raining on the morning of June 30, 2004. On that day, he, his father, and his brother were visiting some of their rental property, and they noticed smoke coming from a house in the area. Brewer's father knocked on the door, and the appellant, who was shirtless, came to the door. Brewer knew the appellant because he had previously rented a place to live from Brewer's father, from which he had been evicted. Brewer's father told the appellant, "You're going to jail now." Brewer

used his cellular telephone to call 911 and report the heavy smoke.

After Brewer called 911, the appellant walked outside the residence, picked up a jug from the yard, and went to a ditch across the street in an attempt to get water. Brewer opined that the amount of water the appellant was able to get in the jug would have been unable to stop a fire. The appellant took the water inside the house. Shortly thereafter, the police and the fire department arrived and extinguished the fire. Brewer testified, "[T]here's no doubt in my mind that the house would have burnt down if I didn't see it, see the smoke that day."

Rah Mosarabi testified that he owned the residence at 765 6th Street in Cleveland which was burned by the appellant. He used the residence as rental property, and his last renter left in 2001 or 2002. Mosarabi had not "done much" to the property in five to seven years. He stated that the living room of the residence had hardwood floors. Mosarabi said that he occasionally boarded up the house and posted some no trespassing signs. However, the boards and the signs were sometimes taken down without Mosarabi's knowledge; therefore, he did not know if the boards or signs were in place on the day of the fire. Mosarabi denied giving the appellant permission to stay at the residence or to set fire to the residence.

Jeremy Greenleaf, a firefighter with the Cleveland Fire Department, testified that he was among those first responding to a call of a structure fire at 765 6th Street. When Greenleaf entered the front door of the residence, he saw light smoke in the room and a hole in the floor with the edges of the hole smoldering with fire. Greenleaf and another fireman got a "booster line" from the fire truck and doused the fire with thirty gallons of water. They also pulled up the edges of the floor and sprayed water underneath to ensure the fire was completely extinguished. Greenleaf explained that it did not take much water to extinguish the fire because it was mostly out when they arrived. He noticed that there was a jug with a bit of water in it near the fire, and it appeared as if some water had already been poured on the fire. Greenleaf opined that if the fire had not been extinguished, it could have gone out on its own, or it might have flared up into a "free burning fire." Greenleaf stated that the floor of the living room was wood, which was flammable, and was also laminated, which "adds to the fireload."

Lieutenant Donnie Sullivan, an arson investigator, testified that he was the last to respond to the fire at 765 6th Street. When Lieutenant Sullivan arrived, three police officers were questioning the appellant on the porch, and he was "very upset." Lieutenant Sullivan asked the appellant a few questions, and the appellant spat at him two or three times. When Lieutenant Sullivan asked the appellant if he had set the fire, the appellant repeatedly yelled and screamed, "God made me do it" and "I love fire."

Lieutenant Sullivan looked into the residence and noticed some smoke and a burned hole in the living room floor, surrounded by trash. Lieutenant Sullivan also saw a cigarette lighter and matches on the floor. During his investigation, Lieutenant Sullivan noted that the house was full of debris, and there were some clothes and food wrappers in the living room. Lieutenant Sullivan opined that the living room floor would need to be replaced due to the fire, and the repairs would

cost approximately $1000. Lieutenant Sullivan did not estimate the amount of damage caused by the smoke, saying that "anytime you have fire, you've got smoke damage, and there was quite a bit of black smoke."

Lieutenant Sullivan stated that one of the reasons that there was not more damage to the residence was the fire department's quick three-minute response to the scene. He believed that the fire would have been larger otherwise. Lieutenant Sullivan opined that the appellant used steel wool, debris, and a door to start the fire. Lieutenant Sullivan did not see any burned furniture in or near the fire.

The first witness for the defense was Wesley Cepin, a friend of the appellant. Cepin testified that he knew the appellant was often homeless. Cepin stated that the appellant received money from the government, and he would wander the streets asking for cash when the money ran out.

Near the time of the fire, the appellant visited Cepin at the music store where Cepin worked. The appellant asked Cepin for money. Cepin later took the appellant home to the building the appellant later burned. Cepin stated that the appellant was able to easily enter the residence.

The appellant testified that he was fifty-one years old. He said that in 1981, he was diagnosed with paranoid schizophrenia. Because of his illness, the appellant received a disability check once a month, his only source of income. The appellant's money was managed by the Southeast Tennessee Human Resources Agency (SETHRA), which organization used the appellant's disability check to pay his rent. The appellant said that early in June 2004, he was living in a property owned by Brewer's father. The property was located on 6th Street. After SETHRA paid the rent for that month, the appellant was evicted from the property. The appellant contacted SETHRA about finding alternate accommodations. They were able to find the appellant a hotel room, but he could afford to stay there only five days. Afterward, the appellant began staying at a laundromat. Someone at the laundromat told the appellant that there was a "burnt up, vacant, condemned building over there where [the appellant] used to live" where he could sleep. The appellant went to the residence, taking with him a blanket that someone at the laundromat had given him, some medicine, and a jug containing some water.

The appellant acknowledged that he had previously been charged with trespassing, and he was aware that he was not supposed to go on someone else's property without permission. He was also aware that the residence was someone else's property. However, the appellant explained that he thought the building was vacant and he did not have anywhere else to go; therefore, he thought it would be alright if he stayed at the property. The appellant said that when he arrived, the residence was "already burnt up" in every room except the living room.

On June 29, 2004, the appellant had been staying at the property six or seven days. On that evening, it began to rain, and the appellant became drenched. He had only the clothes he was wearing, so he decided to build a "campfire" in the living room. He went into a bedroom and got some newspaper that had been left there. He also took two burned dresser drawers back to the living

room. Using a cigarette lighter to ignite the newspaper and the drawers, he built a "real confined campfire" on the living room floor. The appellant acknowledged that the living room floor looked like wood and that he was aware that wood was flammable. However, the appellant stated that he thought the floor was concrete or "wood tile" because the floor in the kitchen was concrete. The appellant maintained that if he had known the living room floor was "pure wood all the way through," he would not have built the fire. The appellant acknowledged that he knew that fire "burns things up."

The appellant spent thirty minutes getting the fire "burning good," then he took off his clothes and spread them around the fire. The appellant ensured that the flames had gone out with only "coals" remaining before he wrapped himself in a blanket and went to sleep.

The appellant woke the next morning and noticed that smoke was coming from the fire. He poured the water from the jug over the fire, but it continued to smoke. The appellant dressed and tried to go outside. Brewer, his father, and his brother were standing outside the front door. They accused the appellant of trying to burn down the house, and they called the police. After the police were called, the appellant took the jug to a little creek across the street to get water to put out the fire. The police and fire department arrived, and the appellant was arrested.

The appellant stated that after his arrest

> they put me in a police car, and the policeman, the policeman started playing, "Welcome to the Hotel California." I remember that, and I hate that song, because every time they get ready to take me to the hospital, to, to, to Mocassin Bend or to the hospital or to the jail, they play, "Welcome to the Hotel California," you know, about them locking up a man and never letting him go and stuff again. So then when they start doing that, I start singing a song called, "Fire." I shouldn't have did it, but it was an old, an old disco tune and I started doing that. And I didn't do it, I didn't think it was gonna get this far though. . . . But I'm sorry and everything, but that's what happened. That's the whole story.

At the conclusion of the trial, the jury found the appellant guilty of arson, a Class C felony, and criminal trespass, a Class C misdemeanor. The trial court sentenced the appellant to concurrent sentences of seven years and thirty days, respectively. On appeal, the appellant argues that the jury could not have found him guilty of arson because the State did not prove that he knowingly committed the crime.[1]

II. Analysis

[1] The appellant does not challenge his conviction for criminal trespass.

On appeal, a jury conviction removes the presumption of the appellant's innocence and replaces it with one of guilt, so that the appellant carries the burden of demonstrating to this court why the evidence will not support the jury's findings. See State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). The appellant must establish that no reasonable trier of fact could have found the essential elements of the offense beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); Tenn. R. App. P. 13(e).

Accordingly, on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. See State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). In other words, questions concerning the credibility of witnesses and the weight and value to be given the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact, and not the appellate courts. See State v. Pruett, 788 S.W.2d 559, 561 (Tenn. 1990).

In pertinent part, Tennessee Code Annotated section 39-14-301(a)(1) (2003) provides:

> (a) A person commits [arson] who knowingly damages any structure by means of a fire or explosion:
>
> (1) Without the consent of all persons who have a possessory, proprietary or security interest therein.

Specifically, the appellant claims that the State did not prove that he committed the crime knowingly; at most, because the appellant had only acted recklessly, he could have been found guilty of the lesser-included offense of reckless burning.

Tennessee Code Annotated section 39-11-302(b) (2003) defines the culpable mental state of knowing as follows:

> (b) "Knowing" refers to a person who acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

See also State v. Claude Francis Garrett, No. M2004-02089-CCA-R3-CD, 2005 WL 3262933, at *22 (Tenn. Crim. App. at Nashville, Dec. 1, 2005), perm. to appeal denied, (Tenn. 2006) (concluding that arson is not strictly a result of conduct offense); State v. Gene Shelton Rucker, Jr., No. E2002-02101-CCA-R3-CD, 2004 WL 2827004, at *10 (Tenn. Crim. App. at Knoxville, Dec. 9, 2004).

The proof at trial revealed that the appellant knew that the residence did not belong to him

and in fact belonged to someone else. He admitted that he knew he was supposed to get the owner's permission before going on the property. The appellant also admitted he knew that fire "burns things up" and that wood is flammable. He acknowledged that the living room floor appeared to be wood. The appellant conceded that he intentionally built the fire, explaining that he wanted to dry his clothes and get warm. The appellant stated that the fire continued throughout the night and only stopped after firefighters extinguished it. Moreover, the appellant told Lieutenant Sullivan that he lit the fire because God told him to and that he loved fire. Lieutenant Sullivan testified that the fire did at least $1000 of damages to the property. We conclude that the foregoing proof amply supports the jury's verdict that the appellant committed arson.

III. Conclusion

Based on the foregoing, we affirm the judgments of the trial court.

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NORMA McGEE OGLE, JUDGE